

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 5-1-2006

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Criminal Appeal No.948 of 2003

Balamurugan

...

Appellant/ Accused 1

Vs.

State by Inspector of Police,
Brammadesam Police Station,
Brammadesam
Villupuram District
(Crime No.518 of 2000)

....

Respondent

This criminal appeal has been filed under Section 374 of Code of Criminal Procedure against the conviction under Section 302 IPC and sentence of imprisonment for life and to pay a fine of Rs.1,000/- made in S.C.No.157 of 2001 on 19.12.2002 on the file of the Principal District and Sessions Court, Villupuram.

For Appellant : Mr.Parthiban for
Mr.Philip Ravindran Jesudoss

For Respondent : Mr.V.M.R.Rajendran,
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by
N.PAUL VASANTHAKUMAR,J.)

The first accused in S.C.No.157 of 2001 on the file of Principal Sessions Court, Villupuram, challenges his conviction under Section 302 I.P.C. and the sentence of imprisonment for life and fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months, imposed on him, by judgment dated 19.12.2002.

2. To prove its case, the prosecution examined PW-1 to PW-14, marked Exs.P-1 to P-18 and produced Mo-1 to MO-10 series.

3. The case of the prosecution as could be seen from the oral and documentary evidence is briefly narrated as follows:

(a) The deceased Kala is the wife of A-1 Balamurugan. A-2 Muniyammal is the mother of A-1. A-3 Iyappan is the son-in-law of A-2. PW-1 Saradambal and PW-2 Vijaya are mother and elder sister of the deceased Kala respectively. PW-4 Raji is the husband of PW-2.

(b) The marriage between A-1 and the deceased Kala was a love marriage. The second and third accused had been insisting the first accused for second marriage with a woman, who would come with 10 sovereigns of gold jewels and on their instigation, A-1 used to harass his wife Kala by demanding dowry and money from her house. The matter was reported to the ex-President Aranganathan and one Murugan, who reprimanded the appellant herein. About six months back A-1 asked his wife Kala whether she knew swimming for which she replied that she did not know swimming. In spite of that he pushed her in the well.

(c) On the fateful day i.e., on 17.9.2000 at about 3.30 a.m., PW-1 Sarathambal and PW-2 Vijaya went to the house of A-1 and found him sitting on the chest of Kala, strangulating her with his right hand, which they could see with the help of chimney light. PW-1 raised alarm and pulled him by shirt, but he threatened the witnesses with dire consequences. Immediately, they came out and raised alarm and the ex-President Aranganathan, PW-3 Murugan, Sivakozhundu and some other persons came and entered into the house and found Kala hanging by rope (கற்றாழை நார் கயிறு) in a bamboo beam in the house. A-1 put out the chimney light and escaped. For the said incident, PW-1 lodged a complaint Ex.P-1 with the Brammadesam Police Station.

(d) On receipt of Ex.P-1, PW-13 Sub Inspector of Police registered a case and prepared Ex.P-11 F.I.R, and sent the same to the Court as well as to his superiors. PW-14 Inspector of Police, on receipt of Ex.P-11 FIR, proceeded to the scene of occurrence, prepared Ex.P-4 observation mahazar and Ex.P-12 rough sketch. He also made arrangements to take photographs of the scene of crime. MO-4 series are photographs and MO-5 series are their negatives. Then PW-14 conducted inquest over the body of the deceased and prepared Ex.P-13 inquest report. He also recovered Mo-1 to MO-3 from the scene of crime under Ex.P-5 mahazar. He then examined witnesses and recorded their statements. Then the body of the deceased was sent to the Government Hospital, Tindivanam for conducting autopsy along with Ex.P-7 requisition.

(e) PW-12 Dr.Sowmiya, Assistant Civil Surgeon, attached to the Government Hospital, Tindivanam, on receipt of Ex.P-7 requisition, conducted autopsy on the body of the deceased on 18.9.2000 at 2.00 p.m. During autopsy, PW-12 found the following on the body of the deceased,

"External Injuries

1. Abrasion on the right elbow joint 1 x 1 cm
2. Contusion on the left knee joint 5 x 5 cms
3. Contusion on the right knee 4 x 4 cms
4. Contusion on the left side of the face
3 x 3 cms
5. Contusion on the forehead 3 x 3 cms
6. Abrasion on the right side of the face
1 x 1 cm
7. Abrasion on the left side of the neck
1 x 1 cm

Injury Nos.1,6,7 blood clot adherent to the wound and cannot be washed out. Borders were irregular and refracted. Injury Nos.2,3,4,5 on cut section shows blood clots which cannot be removed. Injuries Nos.1 to 7 Ante mortem in nature. A well defined ligature mark seen on the front of the neck. It is transverse in nature, runs all around the neck. Ill defined on the back, width 2.5 cms, length 18 cms, Veins on the chest enlarged and prominent. On section of the ligature mark the underlying tissue is contused. Middle 1/3rd of sternomastoid muscle on both sides were contused. Hyoid bone intact.

Head -Scalp normal. No fracture skull bones. Membrane intact, brain liquified.

Neck -Larynx traches epiglottis congested.

Thorax -No fracture rib, both lungs congested. Cut section shows frothy blood.

Heart -300 grams, all 4 chambers are empty.

Abdomen -Stomach distended with undigested rice particles about 500 ml.

Small Intestine -Empty.

Large Intestine -Contains faecal matter.

Gall Bladder-Distended with bile.

Liver -1400 grams, soft, brown in colour.

Spleen -150 grams, soft, congested.

Kidney -170 grams each.

Urinary Bladder -Empty

Uterus -6 x 4 x 3 cm on section empty, not pregnant. Both ovaries normal

Vagina -Normal.

Viscera and Hyoid bone preserved."

PW-12 Doctor opined that the deceased would have died about 48 hours prior to the post mortem. The internal organs and the hyoid bone were sent for toxicological analysis. Exs.P-8 and P-9 are viscera report and hyoid bone report.

(f) On 22.9.2000, PW-14 Inspector of Police arrested all the three accused at 2.00 p.m. in the casurina thope on the east of Munnar and recorded the voluntary confession statement of A-1 and sent them for judicial custody. On completion of the investigation, PW-14 laid the charge sheet against the accused.

4. When questioned under Section 313 CrI.P.C., A-1 denied his complicity in the crime and pleaded innocence.

5. The Trial Court, after going through the materials on record, found that the prosecution has proved the charge against the appellant beyond any reasonable doubt and convicted him under section 302 IPC and imposed sentence as stated above.

6. The learned counsel appearing for the appellant contended that the prosecution has failed to establish the guilt of the appellant and argued that the victim viz., Kala, wife of the appellant committed suicide and therefore the appellant is innocent of the offence and consequently the conviction and sentence imposed by the learned Sessions Judge is not sustainable.

7. The learned Additional Public Prosecutor on the contrary argued that on the date when the occurrence took place, i.e., on 17.9.2000 at about 3.30 a.m., the appellant alone was in the house and he has not given any report with regard to the alleged suicide of his wife Kala either to the Village Administrative Officer or to the Police and he was absconding till his arrest on 22.9.2000 and

therefore the conduct of the appellant itself clearly establishes his guilt. It is further pointed out that in the 313 questioning before the learned Sessions Judge, the appellant merely denied his involvement and no explanation was given for the death of his wife, which is also a vital factor for deciding the guilt of the appellant. The Additional Public Prosecutor, in support of his submissions, relied on the judgment of a Division Bench of this Court reported in 1997 Criminal Law Journal 499 (Shunmugasundaram v. State), in paragraph 19, the Bench held,

"... If some occurrence happens inside the residential portion of the appellant, wherein he was also available, at or about the time of the incident, he is bound to offer his version as to how the occurrence had taken place. ...

Further, the conduct of the appellant immediately after occurrence, is consistent only with his guilt. Assuming that this was a case of suicide, would not have been the conduct of the appellant different? He would then have certainly been present at the scene and attempted to set the law in motion. ... The third circumstance also links the appellant with the crime, moreso, when he had not chosen to offer any explanation, whatever, as to how the occurrence had happened. When he was examined under Section 313 Cr.P.C., to every question addressed to him, his answer was either "false" or "I do not know". ... He never sought to offer an explanation about this crime or even claim that he was not present at the time of the incident. More so when several prosecution witnesses had seen him together with his wife fairly late on the earlier night."

8. On the basis of the above submissions, we have perused the oral and documentary evidence and the circumstances under which the victim died on the fateful day. It is the definite case of the prosecution that the appellant/A-1 killed his wife Kala with an intention of contracting second marriage with another women and to get dowry. PW-1 and PW-2 are mother and elder sister of the deceased Kala respectively and PW-4 is the husband of PW-2. PW-1 in her complaint Ex.P-1 clearly narrated the incidents that took place prior to the occurrence, which establishes the motive of the appellant to commit the murder of his wife. In Ex.P-1, PW-1 has stated that the appellant used to harass his wife demanding dowry in the form of jewels and cash, with an intention to have second marriage at the instigation of A-2 and A-3 in the Sessions Case. In her oral evidence, PW-1 has stated that prior to the occurrence, the appellant pushed his wife in a well asking her whether she knew swimming. He pushed her, even though she answered that she does

not know swimming and replied that he did it for a fun. PW-1 further stated that the deceased used to report the activities of the appellant/A-1 to PW-3 Murugan and others. PW-3 in his evidence stated that he mediated the dispute in their family at the time when the appellant insisted for the second marriage. PW-3 has no motive against the appellant to depose against him.

9. Pws.1 to 4 have narrated about the harassment upon the deceased by the appellant demanding dowry. PW-1 narrated the incident that happened on 17.9.2000 at 3.30 a.m. in Ex.P-1 which was elaborated in her oral evidence. In her oral evidence she has stated that when she went to the house of the deceased at 3.00 a.m., the appellant sat on the chest of the deceased and was strangulating her with a rope (கற்றாழை நாள்) and at that time A-2 and A-3 in the Sessions case were also present. PW-1 further stated that she went outside for bringing the neighbours, during which time the appellant tied the neck of the deceased and set up as if she hung herself in the bamboo beam in the house. This version of PW-1 is fully supported by PW-2.

10. It is contended that Pws.1 and 2 are close relatives of the deceased Kala and their version should be approached with great caution. Apart from the evidence of Pws.1 and 2, there are corroborative evidence available in this case, particularly the evidence of PW-3. PW-3 has no motive to come to the witness box to depose against the appellant. It is the clear evidence of Pws.1 and 2 that after witnessing the occurrence, they came out and raised alarm and brought PW-3 Ex-President and others inside the house. PW-3 has stated that on the date of occurrence at about 4.30 a.m., Pws.1 and 2 came and informed that Kala was murdered and that he went to the house of the appellant and found Kala in hanging position. The oral evidence of PW-3 corroborates the evidence of Pws.1 and 2, which clearly establishes the fact that Pws.1 and 2 witnessed the occurrence. After going through the evidence of Pws.1 to 3, we find that their statements are cogent, trustworthy and reliable.

11. The motive for the appellant to do away with the deceased Kala is clearly spoken to by PW-4, the husband of PW-2. The previous incident of assault on the deceased Kala by the appellant is also stated in Ex.P-2 complaint dated 12.10.1999 given to Brammadesam Police Station, in which it is alleged that the accused was demanding dowry from his wife, the deceased herein. The said matter was settled by a written compromise through Ex.P-3. Ex.P-2 clearly shows that even in the year 1999 there was demand of dowry by the appellant. The alleged illicit intimacy of the deceased Kala with PW-4 was clearly denied by Pws.1 to 4. The evidence of Pws.1 to 4, thus clearly establish the motive for the occurrence as well as the commission of the offence by the appellant.

12. It is seen PW-13 Sub-Inspector of Police registered the case and PW-14 Inspector of Police took up the investigation. PW-9 Head Constable produced the body of the deceased before the Medical Officer, Government Hospital, Tindivanam and after autopsy, he entrusted the remains to the relatives of the deceased. The evidence of PW-12 Doctor that poisoning and fracture of hyoid bone was ruled out by Exs.P-8 and P-9 Viscera report and Hyoid Bone report. PW-12 offered her opinion that the cause of death is respiratory arrest. It is the prosecution case that at about 3.30 a.m. on 17.9.2000, the occurrence took place and the post mortem was conducted at 2.00 p.m. on 18.9.2000. The statement of the Doctor that the death would have occurred about 48 hours prior to post mortem would not make the case of the prosecution unbelievable because the rigor mortis starts spreading all over the body which would take 12 hours and it would persist in the body for 12 hours. Hence no rigor mortis would be available in the dead body about 36 hours after the death. The post mortem having been conducted after about 34 to 36 hours, it cannot be concluded that there is any discrepancy in the time of death.

13. The Doctor's evidence should be looked into in another angle. As per the Modi's Medical Jurisprudence and Toxicology (22nd Edition) at page 237 it is stated that the brain becomes soft and pulpy within 24 to 48 hours in summer and becomes a liquified mass from 3 to 4 days. Therefore, it is clear that after 24 hours from the time of death, the brain would become softy and pulpy and lose its shape. Hence it cannot be definitely stated that the time of death could be prior to 48 hours. The Doctor in her cross examination stated that the death would have happened prior to 2.00 p.m. on 16.9.2000. In view of the above observations, the occurrence could have taken place at the wee hours of 17.9.2000 as port mortem was conducted between 34 to 36 hours after the death.

14. The circumstance of availability of external injuries on the person of the deceased, spoken to by PW-12 would show that there was violent action on the part of the appellant on the deceased at the time of occurrence as spoken to by Pws.1 and 2.

15. It is the case of the prosecution that the appellant strangled and roped up his wife Kala so as to appear that she committed suicide by hanging in a beam. The Doctor's evidence says that the tongue of the deceased was found protruding and the Doctor refrained that the said protrusion may arise even after strangulation. The strangulation is further established due to the availability of contusion of sternomestoid of muscle on both sides, which is common in strangulation and will not occur in hanging. The above fact prove that it is certainly the case of strangulation and not suicide by hanging. Thus the medical evidence also corroborates with the oral evidence of Pws.1 and 2.

16. The presence of Chimney lamp was proved by the seizure under mahazar Ex.P-5. The presence of broken pieces of bangles found in the scene of occurrence, which was seized and established by Ex.P-5 also shows that there was some scuffle between the spouse prior to the occurrence. These aspects would also corroborate the evidence of Pws.1 and 2. Hence the offence against the appellant is clearly established beyond reasonable doubt.

17. As rightly contended by the learned Additional Public Prosecutor, the appellant alone was present at the time of occurrence and he failed to explain the cause of death not only instantaneously but also at a later point of time. It is normal human conduct that if any suicide takes place, the same would be reported to the neighbours, Village Administrative Officer or to the Police by the person living in the house. Instead of doing so, the appellant ran away from the scene of occurrence and he could be arrested only on 22.9.2005, that is after five days from the date of incident, which is another clinching evidence against the appellant, particularly his conduct. Even during 313 questioning, the appellant failed to give any explanation for the cause of death, moreso the alleged story of suicidal death of his wife.

18. As held by the Division Bench of this Court in the decision reported in 1997 Criminal Law Journal 499 (cited supra), this Court is of the firm view that the conduct of the appellant immediately after the occurrence is consistent only with the guilt. Hence this Court is of the considered view that the appellant committed the gruesome murder of his wife Kala on the fateful day and the prosecution has proved the guilt of the appellant beyond any reasonable doubt.

19. In the result, the conviction of the appellant/A-1 under section 302 I.P.C., and the sentence imposed on him to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for another six months, are proper and we find no ground to interfere with the same and consequently the Criminal appeal is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Principal Sessions Judge, Villupuram
2. The Inspector of Police, Brammadesam Police Station, Villupuram District.
3. The Superintendent of Central Prison, Cuddalore.
4. The Public Prosecutor, High Court, Madras.
5. The District Collector, Villupuram District.
6. The Director General of Police, Mylapore, Chennai - 4.

1 cc to Mr.Philip Ravindran Jesudoss, Advocate, SR. 946

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GM (CO)
kk 20/1



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